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CHRISTYNNNE LILI WRENE WOOD

21
22 **SUPERIOR COURT OF CALIFORNIA**

23 **COUNTY OF SAN DIEGO**

24 DEPARTMENT OF FAIR EMPLOYMENT
25 AND HOUSING, an agency of the State of
26 California,

27 Petitioners - Plaintiffs,

28 vs.

CASE NO.: 37-2018-00019066-CU-CR-CTL

**[PROPOSED] COMPLAINT IN
INTERVENTION**

JURY TRIAL DEMANDED

1
2 CFG JAMACHA, LLC dba CRUNCH FITNESS,
3 a California Limited Liability Company; JOHN
4 ROMEO, an individual; and DOES ONE through
5 TEN, inclusive,

6 Respondents – Defendants,

7 CHRISTYNNNE LILI WRENE WOOD,

8 Proposed Intervenor.

9
10 By leave of this Court, Christynne Lili Wrene Wood (“Plaintiff-Intervenor” or “Wood”) intervenes in this Action, and joins with California Department of Fair Employment and Housing (“DFEH”) in alleging the DFEH’s discrimination claims against CFG Jamacha, LLC dba Crunch Fitness, John Romeo, and Does One through Ten (collectively “Defendants”). Ms. Wood also alleges additional claims against Defendants, as described below.

14 **INTRODUCTION**

15 1. On April 17, 2018, the DFEH filed a complaint in San Diego County Superior Court, Case No. 37-2018-00019066-CU-CR-CTL against Defendants. The DFEH’s complaint alleges, among
16 other things, that Defendants intentionally discriminated against Ms. Wood on the basis of her sex,
17 specifically her gender identity and gender expression, by denying her full equal access to the female
18 restrooms and locker rooms at the Crunch Fitness facility located at 522 Jamacha Road in El Cajon,
19 California (“Crunch Fitness”).
20

21 2. Ms. Wood has a right to intervene in this action because Ms. Wood is the aggrieved and
22 real party in interest in the DFEH’s civil action. Ms. Wood has a statutory right to intervene pursuant
23 to Government Code 12965, subdivision (a). Moreover, even absent such statutory authorization, Ms.
24 Wood has a direct and immediate interest in the action, she will not enlarge the issues in the case, and
25 the reasons supporting intervention outweigh the opposition.
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1 fitness instructors. Thus, she credits her friendships within the water aerobics community with
2 positively changing her life.

3 20. As part of its online marketing efforts to entice customers to join its gym, Crunch
4 Fitness represents itself as a judgment-free, inclusive environment. According to its website,
5 individuals who join Crunch Fitness and continue to pay its monthly fees can expect “no
6 judgments...no glares of disapproval. Here [at Crunch Fitness] we keep open minds. We are nurturers.
7 [There] is room for everyone: all kind of people with all kinds of goals who’ve chosen to come reach
8 them with us.”¹

9 21. The inclusive environment was especially important to Ms. Wood. Ms. Wood is a
10 transgender woman. Although she realized early in life that her gender identity was female, for much
11 of her life she was scared to express her identity, fearing she would face discrimination and judgment.
12 As Ms. Wood became better acquainted with the lesbian, gay, bisexual, transgender, and queer
13 community, she developed more confidence about identifying as a transgender woman. Ms. Wood
14 began transitioning to female with the support of her health care providers in March 2016.

15 22. In or around the summer of 2016, Ms. Wood told the instructor and other gym members
16 in her water aerobics class that she was embarking on a gender transition, meaning that she would
17 openly live consistent with her authentic gender identity, as a woman.

18 23. Soon after she began her transition, in or around the week of September 11, 2016, Ms.
19 Wood was harassed by a Crunch Fitness member in the men’s general locker room.² The man
20 approached Ms. Wood and said, “ello, man,” smiled, and grabbed his genitals. Scared and humiliated,
21 Ms. Wood immediately gathered her things and fled the locker room. She felt threatened and was
22 shocked, frightened, and humiliated. Ms. Wood immediately reported the incident to Crunch Fitness’s
23 assistant general manager Tasha Rice, who was acting as the general manager of Crunch Fitness during
24 part of the relevant period. Though Ms. Rice indicated to Ms. Wood that the management and staff at

25 _____
26 ¹ See www.crunch.com/about, last visited May 1, 2018.

27 ² Crunch Fitness has two types of locker room and restroom facilities for men and women — the
28 general locker room and restroom, which are available to all members of the gym, and the platinum
locker room and restroom, which members typically have to pay additional monthly charges to access.
On information and belief, the majority of gym members use the general locker rooms and restrooms.

1 Crunch Fitness would make sure she was safe, she did not appear to take any action to address or
2 investigate the threats.

3 24. During this conversation in response to the September 2016 harassment incident, Ms.
4 Wood asked Ms. Rice how she could go about getting access to the women’s locker room facilities at
5 the gym. Ms. Rice said that Ms. Wood “should be allowed” to use the women’s facilities once she
6 presented the gym with a doctor’s verification that she was a transgender woman undergoing gender-
7 affirming medical treatment, or words to that effect.

8 25. On or around September 30, 2016, Ms. Wood provided Defendants with a letter from
9 her doctor verifying her gender identity and her need to access the women’s facilities at the gym. The
10 letter stated, among other things, that Ms. Wood was receiving gender-affirming medical treatment and
11 was in the process of legally changing her name and gender. The verification further stated, “It is very
12 important that [Ms. Wood] be able to use the women’s locker room at the Crunch Fitness Gym.”.

13 26. On information and belief, Ms. Rice received and reviewed the medical verification
14 letter that Ms. Wood submitted on or around September 30. Ms. Rice spoke with Ms. Wood regarding
15 her gender transition around this time, but she did not take any steps to accommodate Ms. Wood’s
16 need to access the women’s locker room.

17 27. In or around the week of October 3, 2016, John Romeo, one of the co-owners of CFG
18 Jamacha, LLC, told Ms. Wood that she could begin using the men’s platinum locker room and
19 restroom facilities. Though Ms. Wood was still prohibited from the women’s locker room, Romeo
20 indicated that because the men’s platinum locker room was less crowded than the men’s general locker
21 room, the chances of continued threats to Ms. Wood by Crunch’s male members would be decreased.
22 Ms. Wood reluctantly began using the men’s platinum facilities because she had no other option if she
23 was to continue exercising at Crunch Fitness, which was integral to her life.

24 28. In February 2017, Ms. Wood legally changed her name to Christynne Lili Wrene Wood
25 and her gender to female. In mid-February 2017, Ms. Wood called Crunch Fitness and informed Ms.
26 Rice that she was going to court for her name and gender change, and that she was planning to stop by
27 Crunch Fitness to retake her membership photo and update her personal information in the gym’s
28 computer system. Accordingly, after receiving February 24, 2017 San Diego Superior Court order

1 changing her name and gender, Ms. Wood took a copy of the decree to the gym, and gave it to Ms.
2 Rice and then general manager Asim Grebo. At that time, Ms. Wood asked to be allowed to use the
3 female locker room and restroom at Crunch Fitness.

4 29. In response to Ms. Wood’s February 24, 2017, request to use the female locker room
5 and restroom at Crunch Fitness, Ms. Rice asked Ms. Wood whether or not she had completed sex-
6 reassignment surgery, or words to that effect. Ms. Wood responded that she had not. Ms. Rice and Mr.
7 Grebo told Ms. Wood that the owner of Crunch Fitness was not comfortable with Ms. Wood using the
8 female facilities. They indicated that she must complete “sex-reassignment surgery” before Crunch
9 would permit her to use the female locker room and restroom. Ms. Wood was thereafter forced to
10 continue to use the men’s locker room.

11 30. In April 2017, Ms. Wood filed a discrimination complaint against Crunch Fitness with
12 the Department of Fair Employment and Housing. After the DFEH began investigating the matter, Ms.
13 Wood filed an amended administrative complaint with the agency in July 2017 that expanded on her
14 initial allegations.

15 31. On September 12, 2017 at approximately 8:00 a.m., Ms. Wood was in the men’s
16 platinum locker room after completing her water aerobics class. A male member entered the locker
17 room, sat on the bench near Ms. Wood, and called her, “Fucking faggot.” Ms. Wood was extremely
18 upset and concerned about her safety. For months, Ms. Wood had been subjected to harassment and
19 threats due to Crunch Fitness’s refusal to allow her access to the women’s locker room. This incident,
20 like the others, made her extremely upset, disheartened and scared for her safety. Ms. Wood told
21 Crunch Fitness about the threat of September 14, 2017. The following day, on September 15, 2017,
22 after approximately one year after Ms. Wood reported the threats, she was told that Crunch Fitness
23 would allow her to use the female locker room and restroom.

24 32. Ms. Wood was not permitted to use the Crunch Fitness female locker room and
25 restroom, either the general or platinum facilities, from September 30, 2016 to September 14, 2017. As
26 a result, she was required to use the male locker rooms and restrooms each time she visited Crunch
27 Fitness — at least sixty-six (66) documented times — from September 30, 2016 to August 8, 2017.

1 38. Defendants are owners and/or managing members of the Crunch Fitness facility located
2 at 522 Jamacha Road in El Cajon, California, the business establishment where the discriminatory
3 conduct occurred. (See Civ. Code, § 51, subd. (b).)

4 39. Defendants' conduct in denying Ms. Wood full and equal access to the female restroom
5 and locker room facilities at Crunch Fitness because of her sex, specifically her gender identity and
6 gender expression, constitutes sex discrimination that deprived Ms. Wood of the full and equal
7 accommodations, advantages, facilities, privileges, or services in the business establishment in
8 violation of the Unruh Act.

9 40. Defendants intentionally discriminated against Ms. Wood because of her sex,
10 specifically her gender identity and gender expression, by denying her full and equal access to the
11 female restroom and locker room facilities at the Crunch Fitness located at 522 Jamacha Road in El
12 Cajon, California.

13 41. The acts and conduct of the Defendants, as previously described, constitute unlawful
14 intentional and arbitrary discrimination in violation of the Unruh Act, in that the Defendants denied
15 Ms. Wood full and equal access to the female restroom and locker room facilities at Crunch Fitness
16 because of her sex, specifically her gender identity and gender expression.

17 42. Pursuant to Civil Code section 52, subdivision (a), Defendants are "liable for each and
18 every offense for the actual damages, and any amount that may be determined by a jury, or a court
19 sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less
20 than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in
21 addition thereto, suffered by [Ms. Wood]" as a result of the denial of her rights provided by the Unruh
22 Act.

23 43. Ms. Wood was harmed, and the Defendants' aforementioned intentional discrimination
24 was a substantial factor in causing such harm.³

25 ³ Judicial Council of California Civil Jury Instruction 3060 erroneously states that a plaintiff is
26 required to prove that the protected characteristic was a "substantial" motivating reason for the
27 defendant's allegedly discriminatory conduct. The Judicial Council's Directions for Use acknowledge
28 that the requirement that the protected characteristic be a "substantial" motivating reason comes from
employment cases brought under the FEHA (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203,
232) and that the application of such a heightened standard has not been addressed by the courts. In
fact, in adjudicating Unruh Act cases before and after *Harris*, courts have articulated the plaintiff's

1 44. In accordance with Civil Code section 52, subdivision (a), Ms. Wood is entitled to
2 statutory minimum damages of four thousand dollars (\$4,000) for each and every offense by the
3 Defendants including, but not limited to, each time she visited Crunch Fitness between September 30,
4 2016 to September 14, 2017 and was denied access to the female restroom and locker room facilities.
5 As such, the Defendants are liable for damages in an amount to be determined at trial, but in any event
6 no less than \$4,000 per visit to the gym she made during the relevant time period.

7 45. Plaintiff-intervenor is not required to prove actual damages in a case, such as this,
8 where she seeks statutory minimum damages per offense under the Unruh Act in lieu of actual
9 damages. In the alternative, Ms. Wood alleges that as a direct result of the aforementioned intentional
10 discrimination by Defendants, she suffered out-of-pocket expenses and emotional distress including,
11 but not limited to, anxiety, stress, nervousness, fear, frustration, embarrassment, and humiliation in an
12 amount to be determined at trial.

13 46. By intentionally and arbitrarily discriminating against Ms. Wood, Defendants
14 demonstrated that they will continue to engage in the pattern and practice of unlawful discrimination
15 that is the subject of this Complaint. Unless Defendants are enjoined from failing or refusing to comply
16 with the mandates of the Unruh Act, the rights of persons to full and equal accommodations,
17 advantages, facilities, privileges, or services in all business establishments of every kind whatsoever,
18 no matter what their sex, including their gender identity and gender expression, will continue to be
19 violated. The DFEH and Ms. Wood lack the ability to prevent such harm, injury, and loss that is the
20 subject of this Complaint and that will continue until this Court enjoins the complained of unlawful
21 conduct and grants other affirmative relief as prayed for herein.

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25 burden as demonstrating his or her protected characteristic was *a motivating* reason for the allegedly
26 unlawful conduct. (See, e.g., *Turner v. Assoc. of American Med. Colleges* (2008) 167 Cal.App.4th
27 1401, 1411; *Wilkins-Jones v. County of Alameda* (N.D.Cal. 2012) 859 F.Supp.2d 1039, 1048;
28 *Gutierrez v. Gonzalez* (C.D.Cal. Apr. 26, 2017, Case No. 2:17-cv-01906-CAS(Ex)) 2017 WL
1520419, at p. 5; *Keshish v. Allstate Insurance Co.* (C.D.Cal. July 30, 2012, Case No. CV 12-03818
MMM(JCx) 2012 WL 12887077, at pp. 8-9.) Here, the distinction is of limited importance given that
Ms. Wood's identity as a transgender woman substantially motivated Defendants' unlawful
discrimination.

1 **SECOND CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **(Against all Defendants)**

4 47. Plaintiff-Intervenor realleges, and incorporates by reference, each allegation contained
5 in the preceding paragraphs as though fully set forth herein.

6 48. At all relevant times, Defendants owed a duty to paid members, including Ms. Wood, to
7 exercise reasonable care to its paid members in connection with Defendants' control, possession,
8 management and ownership of their gym. This includes the duty to exercise reasonable care for the
9 safety, protection and privacy of paid members while accessing the gym, and the duty to avoid
10 exposing members, including Ms. Wood, to harassment, danger and harm.

11 49. Defendants breached the duty of care owed to Ms. Wood by failing to ensure that Ms.
12 Wood had access to the locker room and restroom to which she was lawfully entitled and failing to
13 protect Ms. Wood from repeated threats and harassment from gym members. Despite Defendants'
14 knowledge of Ms. Wood's gender and the ongoing threats to her safety and privacy, Defendants failed
15 to ensure Ms. Wood's access to the correct locker room and restroom for her gender.

16 50. Ms. Wood is informed and believes, and thereon alleges, that Defendants knew, or in
17 the exercise of reasonable care should have known, that preventing Ms. Wood from accessing the
18 female locker room and restroom and failing to protect her from harassment, threats, intimidation and
19 violations of privacy, would cause Ms. Wood to suffer harm, including severe emotional distress.

20 51. As a proximate result of Defendants' negligence, Ms. Wood suffered severe anguish,
21 fear, anxiety, worry, humiliation and shock.

22 52. The conduct of the Defendants, and each of them, was engaged in with fraud,
23 oppression and/or malice, and was in conscious disregard of the rights and safety of others, including
24 but not limited to Ms. Wood, herein so as to warrant the imposition of punitive damages pursuant to
25 California Civil Code section 3294.

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1 **THIRD CAUSE OF ACTION**

2 **NEGLIGENT SUPERVISION, HIRING, TRAINING AND/OR RETENTION**

3 **(Against all Defendants)**

4 53. Plaintiff-Intervenor realleges, and incorporates by reference, each allegation contained
5 in the preceding paragraphs as though fully set forth herein.

6 54. At all relevant times, Defendants owed a duty to the members of their gym, including
7 Ms. Wood, to exercise reasonable care in connection with the hiring, training and supervision of their
8 employees.

9 55. Defendants breached their duty of care in hiring, retention, training, and/or supervision
10 of their employees. Particularly, Defendants failed to properly train and supervise the gym's managers
11 and employees, including but not limited to Asim Grebo and Tasha Rice, with respect to: anti-
12 discrimination and anti-harassment policies and procedures; appropriate treatment of transgender
13 members; member access to restrooms and locker rooms; and appropriate responses in the event of
14 safety problems at the gym.

15 56. Ms. Wood is informed and believes, and thereon alleges, that Defendants were
16 negligent in supervising their employees including but not limited to Ms. Rice and Ms. Grebo.
17 Defendants had a duty to supervise their employees to ensure that they were performing their jobs in a
18 fit and competent manner, including affording full and equal accommodations, advantages, facilities,
19 privileges, and services to all members regardless of protected class status, consistent with California
20 law; protecting members like Ms. Wood from harassment; and promptly addressing safety concerns at
21 the gym. Instead, Ms. Rice, Ms. Grebo and other employees continually denied Ms. Wood access to
22 the female restroom and locker room for nearly a year, and even after she experienced overt
23 harassment in the male locker rooms; asked her inappropriate and intrusive questions about her
24 medical history, and failed to take the necessary steps to protect Ms. Wood when she complained that
25 another gym member had harassed her.

26 57. Ms. Wood is informed and believes, and thereon alleges, that Defendants were
27 negligent in training their employees, including Ms. Rice and Ms. Grebo. Defendants had a duty to
28

1 provide training to their employees with respect to applicable anti-discrimination laws, policies and
2 procedures, member access to restrooms and locker rooms, and anti-harassment procedures.

3 58. Ms. Wood is informed and believes, and thereon alleges, that Defendants knew, or in
4 the exercise of reasonable case should have known, that unless they intervened to protect Ms. Wood
5 against harassment, grant her access to the female restroom and locker room, and adequately
6 supervised, prohibited, controlled, regulated, disciplined and/or otherwise penalized the improper
7 conduct of their employees as described herein, their failure to protect, supervise and intervene would
8 have the effect of encouraging, ratifying, condoning, exacerbating, worsening and continuing said
9 conduct, thereby subjecting Ms. Wood to personal injury and emotional distress.

10 59. As a proximate result of Defendants' breach of duty and negligence in supervising
11 and/or training their employees, Ms. Wood has suffered extreme emotional distress, humiliation,
12 embarrassment, and mental anguish.

13 60. The conduct of the Defendants, and each of them, was engaged in with fraud,
14 oppression and/or malice, and was in conscious disregard of the rights and safety of others, including
15 but not limited to Ms. Wood, herein so as to warrant the imposition of punitive damages pursuant to
16 California Civil Code section 3294.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff-Intervenor, Ms. Christynne Lili Wrene Wood, prays that this Court
19 issue judgment against the Defendants, and order Defendants CFG Jamacha, LLC dba Crunch Fitness,
20 John Romeo, and Does One through Ten, inclusive, to do the following:

21
22 1. Immediately upon the Court's order, cease and desist from discriminating against Ms.
23 Wood, and all other current and prospective members, on the basis of sex, including gender identity
24 and gender expression, or any other protected characteristic or arbitrary basis at all of the business
25 establishments Defendants own and/or manage in the State of California;

26 2. Immediately upon the Court's order, provide all current and prospective members,
27 including Ms. Wood, access to the locker room and restroom facilities appropriate to the member's
28 gender identity;

1 3. Immediately upon the Court’s order, not retaliate against Ms. Wood because Ms.
2 Wood exercised her rights under the Unruh Act and other California law, or against other Crunch
3 Fitness members who assisted Ms. Wood in the exercise of these rights;

4 4. Immediately upon the Court’s entry of final judgment, post the final judgment and a
5 copy of the Court’s order in an area visible to all current and prospective customers of the business
6 establishments owned and/or managed by Defendants including, but not limited to, the Crunch Fitness
7 facility located at 522 Jamacha Road in El Cajon, California. The obligation to maintain these
8 postings shall remain in effect for five years from the date of the Court’s order;

9 5. Within 90 days of the Court’s order, cause to be provided, at Defendants’ own
10 expense, at least two hours of training on the rights, duties and obligations of business establishments
11 under the Unruh Act to all owners, managers, agents, servants, and employees who work at all
12 business establishments owned and/or managed by Defendants including, but not limited to, the
13 Crunch Fitness facility located at 522 Jamacha Road in El Cajon, California. The training shall place
14 special emphasis on sex discrimination, including the following issues: (1) gender identity and gender
15 expression; (2) harassment and retaliation; and (3) preventing and eliminating discrimination,
16 harassment, and retaliation. The training shall occur annually thereafter for four years;

17 6. Within 60 days of the Court’s order, post DFEH’s “Unruh Civil Rights Act Fact Sheet”
18 (DFEH-U01P-ENG) in an area visible to all current and prospective customers of the business
19 establishments owned and/or managed by Defendants including, but not limited to, the Crunch Fitness
20 facility located at 522 Jamacha Road in El Cajon, California. The obligation to maintain this posting
21 shall remain in effect for five years from the date of the Court’s order;

22 7. Within 60 days of the Court’s order, adopt or update non-discrimination policy(ies)
23 and statements applicable to all business establishments owned and/or managed by Defendants
24 including, but not limited to, the Crunch Fitness facility located at 522 Jamacha Road in El Cajon,
25 California, in accordance with applicable state and federal law. The modified non-discrimination
26 policy(ies) shall explicitly list gender identity and gender expression as protected characteristics and
27 shall include language stating that members and/or customers shall have access to the restroom and
28 locker room facilities that align with their gender identity. This anti-discrimination policy shall also

1 include contact information for the DFEH. The amended policy shall remain in effect for five years
2 from the Court's order and shall be updated to maintain conformity with applicable law;

3 8. Within 60 days of the Court's order, develop, implement, and distribute a written
4 policy and procedure for handling, documenting, and responding to member complaints related to
5 Defendants' business establishments including, but not limited to, the Crunch Fitness facility located
6 at 522 Jamacha Road in El Cajon, California;

7 9. Within 120 days of the Court's order, provide a report to the DFEH of compliance with
8 all requirements set forth in the Court's order. Annually for four years thereafter, Defendants shall
9 submit a report to the DFEH certifying compliance with the ongoing requirements set forth in the
10 Court's order;

11 10. In accordance with Civil Code section 52, subdivision (a), pay Ms. Wood actual
12 damages in an amount to be proved at trial, including economic damages and non-economic damages
13 resulting from Defendants' unlawful conduct, up to a maximum of three times the amount of actual
14 damages, but no less than \$4,000 for each and every offense, plus annual interest as required by law;

15 11. Pay Ms. Wood compensatory damages, in an amount according to proof;

16 12. Pay Ms. Wood punitive damages in an amount according to proof;

17 12. Pay reasonable attorneys' fees, expert fees and costs, pursuant to Civil Code section
18 52, subdivision (a);

19 13. Pay interest as allowed by law;

20 14. Provide such other and further relief as the Court may deem just.

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DEMAND FOR JURY TRIAL

Plaintiff-Intervenor hereby demands a trial by jury on all claims so triable.

DATED: _____

Respectfully submitted,
NIXON PEABODY LLP

By: _____

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